

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 3

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

Title 8: Chapter 4, Subchapter 7, Article 24, Section 3641(f) and
Section 3648(o) of the General Industry Safety Orders

Orchard Man-Lifts**SUMMARY**

Section 3641 contains requirements pertaining to the design and use of a specialized agricultural aerial device known as an orchard man-lift. These aerial devices are used to elevate and position workers who harvest and/or prune fruit and nut trees. The typical orchard man-lift utilizes an articulating or telescopic boom and a platform that is either fully enclosed or surrounded by a guardrail. Because orchard man-lifts eliminate the need for a ladder, they are safer and are less labor-intensive resulting in increased productivity.

Section 3641(f) requires employers to follow the operating instructions contained in Section 3648 of the General Industry Safety Orders when operating orchard man-lifts. These operating instructions address the safe operation of all aerial devices inclusive of orchard man-lifts and include requirements pertaining to braking systems, authorized employee operation, boom, basket and platform load limits, use of wheel chocks, fall protection, etc. Section 3641(f) specifies, however, that the operating instructions in Section 3648 shall apply to orchard man-lifts with the following exceptions: (1) orchard man-lift operators shall be trained in accordance with the manufacturer's recommended operating procedures, and (2) that a written emergency procedure to move and lower the platform, should the platform operator become unable to operate the controls, be developed and operators be trained in these emergency procedures.

Board staff notes that the aerial device operating instructions contained in Section 3648 are universally accepted instructions based in part on industry experience and national consensus recommendations of aerial device manufacturers. Section 3648 operating instructions are intended to apply to all types of aerial devices, including orchard man-lifts, to ensure operator safety. Consequently, Board staff proposes to reword Section 3641(f) to require employers to comply with the operating instructions in Section 3648 in addition to the two requirements in subsections (f)(1) and (2).

This proposal is also intended to address a clarity issue regarding fall protection requirements for orchard man-lifts manufactured after September 1, 1991¹ with guardrail heights 42 inches or more. Section 3641(b)(4) requires fall protection specifically for those orchard man-lifts with guardrails that are less than 42 inches in height. Therefore, an orchard man-lift with a guardrail height of 42 inches or greater would seemingly default to the fall protection requirements contained in Section 3648 regarding aerial devices, per Section 3641(f). During a September 1990 advisory committee meeting, however, which resulted in a rulemaking to incorporate regulations specific to orchard man-lifts, it was the consensus opinion that the combination of the tight or restrictive platform area (designed for one person) and a 42-inch high or greater guardrail height would provide adequate fall protection. Thus, to eliminate the ambiguity surrounding the omission of the fall protection issue with regard to these particular orchard man-lifts, Board staff proposes to add an exception after Section 3648(o) to exclude these lifts from the personal fall protection requirements contained in this subsection.

The proposal will have little effect, if any, upon employers and only to the extent that it will clarify that the operating instructions in Section 3648 are to be complied with independent of the two requirements in Section 3641(f)(1) and (2), and that those orchard man-lifts manufactured after September 1, 1991 with guardrail heights 42 inches or greater are exempt from the fall protection requirements contained in Section 3648.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 3641. Orchard Man-Lifts (Pruning Tower).

Section 3641 contains regulations addressing a unique type of aerial device, orchard man-lifts, used in agriculture to elevate and position workers for the purpose of harvesting and/or pruning fruit and nut trees. This section outlines the design, construction and use requirements of such devices in California.

Section 3641(f) states that the operating instructions contained in Section 3648 of the General Industry Safety Orders are to apply to orchard man-lifts with the following two exceptions: (1) that orchard man-lift operators be trained in accordance with the manufacturer's recommended operating procedures; and (2) that a written emergency procedure to move and lower the platform be developed should the platform operator become unable to operate the controls. Operators are also required to be trained in these emergency procedures.

A revision is proposed to rephrase subsection (f) to read: "Operating instructions in Section 3648 of the General Industry Safety Orders shall apply to orchard man-lifts in addition to the following:..."

¹ Date, derived by an advisory committee convened in 1990, whereby orchard man-lifts must comply with regulations, codified in 1991, pertaining to minimum design, use and performance safety standards.

The proposed revision will clarify to the employer that the operating procedures contained in Section 3648 apply to orchard man-lifts along with the two additional requirements listed in subsection (f).

Section 3648. Operating Instructions (Aerial Devices).

This section contains various requirements pertaining to the design, use and operation of aerial devices and includes, but is not limited, to the following: lift control design, use of authorized operators, boom, basket and platform load limits, use of wheel chocks, fall protection, etc.

Subsection (o) requires all employees to be secured to the boom, basket or tub of the aerial device through the use of a personal fall protection system.

A revision is proposed to add an “Exception” to subsection (o) that excludes orchard man-lifts manufactured after September 1, 1991 with guardrails 42 inches or higher from the fall protection requirement.

The proposed revision will clarify the fall protection requirements for orchard man-lifts not covered under Section 3641(b)(4).

DOCUMENTS RELIED UPON

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN
ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action because orchard man-lifts are not utilized by any state agency.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.